



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: The Cadmus Group, Inc.

File: B-241372.3

Date: September 25, 1991

Joel R. Feidelman, Esq., and Terry E. Miller, Esq., Fried, Frank, Harris, Shriver & Jacobson, for the protester.  
Donald P. Arnavas, Esq., and Clayton S. Marsh, Esq., Ropes & Gray, for Viar & Company, an interested party.  
David J. O'Connor and Avital G. Zemel, Esq., Environmental Protection Agency, for the agency.  
Glenn G. Wolcott, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency reasonably excluded protester's proposal from the competitive range (leaving a competitive range of one), where proposal in competitive range was substantially superior to the protester's under each of the four technical evaluation factors and protester's proposed cost was 12 percent higher.

### DECISION

The Cadmus Group, Inc. protests its exclusion from the competitive range in a procurement conducted by the Environmental Protection Agency (EPA), under request for proposals (RFP) No. W001503-D1. Cadmus protests that the agency improperly evaluated technical proposals and improperly excluded its technically acceptable proposal from the competitive range.

We deny the protest.

### BACKGROUND

The RFP was issued on July 13, 1990, and sought proposals to support EPA's Office of Emergency and Remedial Response (OERR) in planning, managing, implementing, and evaluating EPA's "Superfund" program. Under this program, EPA is responsible for responding to problems posed by releases or potential releases of hazardous substances, pollutants, and contaminants.

The RFP contemplated award of a level-of-effort, cost-reimbursable contract and provided that contract performance would be accomplished through issuance of task orders or "work assignments." The RFP also provided that, in evaluating proposals, technical factors would be more important than cost and award would be made to the offeror whose proposal was most advantageous to the government.

On October 15, the agency received three proposals, including Cadmus'. By letter dated March 21, 1991, Cadmus was advised that its proposal had been determined to be outside the competitive range.

Section 15.1001 of the Federal Acquisition Regulation (FAR) states:

"(a) General. The contracting officer shall promptly notify each offeror whose proposal is determined to be unacceptable or whose offer is not selected for award, unless disclosure might prejudice the Government's interest.

(b) Preaward notices. . . . [W]hen a limited number of offerors have been selected as being within the competitive range (see 15.609), the contracting officer, upon determining that a proposal is unacceptable, shall promptly notify the offeror. The notice shall at least state (i) in general terms the basis for the determination and (ii) that a revision of the proposal will not be considered." (Emphasis added.)

Despite the FAR requirement, the EPA provided no explanatory information to Cadmus regarding its exclusion from the competitive range. On March 28, Cadmus telephoned the contracting officer to obtain some explanation regarding its exclusion; the contracting officer declined to discuss the matter.

Thereafter, Cadmus filed a protest with our Office asserting generally that its proposal complied with all of the RFP's requirements, that its proposal was most advantageous to the government and, therefore, that its proposal should not have been excluded from the competitive range. The EPA responded by asking that the protest be summarily dismissed, arguing that "Cadmus' protest utterly fails to set forth concrete, specific allegations regarding why or how the EPA's exclusion of Cadmus' proposal . . . was factually erroneous, improper, or a violation of law." We declined to dismiss the protest because the generality of the protest may have resulted from the agency's own failure to provide the FAR-required basis for its decision to Cadmus.

The EPA subsequently submitted a report detailing its basis for excluding Cadmus from the competitive range. EPA explained that proposals had been submitted by Cadmus, Viar & Company, and a third offeror, and that following evaluation by EPA's technical evaluation panel (TEP) and business evaluation panel (BEP), Cadmus and the third offeror were excluded from the competitive range.<sup>1/</sup> The EPA provided documentation regarding its evaluation of proposals which showed that Cadmus' and Viar's proposals were rated as follows:

	Technical Score	Evaluated Cost
Viar	93	\$6,402,907
Cadmus	58	\$7,193,740

The contracting officer concluded that Cadmus had no reasonable chance of receiving the contract because of its low technical score and its high proposed cost, and the presence of Viar's low-cost, "excellent" proposal.

Cadmus protests that: (1) the EPA failed to properly evaluate the technical proposals; and (2) exclusion of Cadmus' technically acceptable proposal from the competitive range was improper.

#### EVALUATION OF PROPOSALS

Cadmus first protests that the scores assigned to Cadmus' and Viar's proposals by the TEP do not accurately reflect their respective merits. As discussed below, we find the EPA's evaluation of the proposals reasonable.

The RFP established the following four criteria on which proposals were to be evaluated: (1) management plan; (2) qualification and commitment of personnel; (3) corporate experience; and (4) technical experience and approach. Following evaluation by the individual evaluators and discussions between the evaluators during which consensus scores were established, Cadmus and Viar received the following scores for each of the evaluation factors.

	<u>Cadmus</u>	<u>Viar</u>	<u>Maximum</u>
Management Plan	14	26	30
Personnel	11	23	25
Corporate Experience	9	14	15
Technical Experience and Approach	<u>24</u>	<u>30</u>	<u>30</u>
Total	58	93	100

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<sup>1/</sup> The third offeror did not participate in this protest.

Regarding the first evaluation factor, management plan, the RFP asked offerors to describe the organizational methods and administrative mechanisms they proposed to manage the contract efforts, to maintain cost and scheduling control, and to provide quality supervision of manpower.

Cadmus' proposal offered to perform the contract relying on 11 different subcontractors; Viar's proposal contemplated four subcontractors. The EPA evaluated Cadmus' management plan as having weaknesses because Cadmus did not demonstrate a clear understanding of the prime contractor's role in performing the contract. For example, Cadmus' proposal indicated that EPA would be able to choose between Cadmus' various subcontractors with regard to performance of specific work assignments; however, Cadmus' proposed plan ignored the fact that, under the terms of the contract, EPA would not be authorized to direct the prime contractor to use specific subcontractors for particular work assignments. The EPA was also concerned that Cadmus' management plan did not contemplate Cadmus' work assignment managers playing a strong role in the quality assurance/quality control (QA/QC) process and that this would result in the EPA having to pay for additional high-level personnel to perform this function. The EPA was also concerned by the fact that Cadmus' proposed QA/QC process did not include any involvement by EPA's managers.

In contrast, the EPA viewed Viar's management plan as demonstrating a clear understanding of the prime contractor's role in performing the contract. Specifically, EPA concluded that Viar's proposal demonstrated clearly defined lines of responsibility and authority between it and its four subcontractors, and clearly demonstrated the functions to be performed by the project managers and work assignment managers. EPA concluded that Viar's managers would be able to effectively monitor staff performance because they were organizationally close to most of the proposed staff.

Regarding the second evaluation factor, qualification and commitment of personnel, the RFP required offerors to identify the management, technical, and scientific personnel to be committed to the contract and to indicate the experience and training of those personnel. The RFP also required that offerors submit resumes for key personnel, state whether such personnel were current employees of the offeror and, if not, demonstrate their availability to perform under the contract.

Although the EPA considered Cadmus' proposal acceptable under this evaluation factor, it found several weaknesses. For example, 13 percent of the key personnel proposed by Cadmus

had no experience with "large" projects,<sup>2/</sup> and 32 percent of the key personnel proposed had no experience with "very large" projects.<sup>3/</sup> EPA also found weaknesses in Cadmus' proposal with regard to demonstrating the availability of personnel. For example, Cadmus stated that one of the key personnel proposed would be able to spend 100 percent of her time on the contract; however, this individual was assigned to four other projects--two of which would not end until September 1991, and one of which would not end until December 1991. Similarly, Cadmus stated that another one of the key personnel proposed would be able to devote 90 percent of his time to the contract; however, this individual was assigned to two other projects--both of which would not end until September 1993.

In contrast, the EPA evaluated Viar's proposal as being very strong in the area of the personnel proposed. For example, Viar identified the percentage of time each key person intended to devote to the contract and, where an ongoing project was not projected to be completed before the start up of this contract effort, Viar identified specific replacement personnel.

With regard to the third evaluation factor, corporate experience, the RFP called for offerors to demonstrate corporate experience in providing rapid responses on short lead-time tasking and demonstrate past corporate experience in simultaneously coordinating multiple interrelated technical, environmental, and management support tasks.

EPA determined that Cadmus' proposal was acceptable with regard to demonstrating its own experience for rapid response on short lead-time tasking; however, the TEP expressed concern that the proposal did not demonstrate Cadmus' ability to perform such work in the context of managing 11 subcontractors. Similarly, the EPA expressed concern that Cadmus' proposal did not demonstrate an ability to coordinate a large number of interrelated tasks, using multiple subcontractors.

By comparison, EPA determined that Viar's proposal was "excellent" with regard to demonstrating its capability and experience on similar complex tasks. Viar's proposal listed several examples of such work previously performed, specifically identifying the agency and contract number under which the prior work was accomplished.

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<sup>2/</sup> "Large" projects were defined as those with a dollar value between \$200,000 and \$350,000.

<sup>3/</sup> "Very large" projects were defined as those having a dollar value in excess of \$350,000.

Finally, with regard to the fourth evaluation factor, technical experience and approach, the RFP required the offerors to demonstrate their experience in analyzing management projects and systems completed within the past few years and present a recent representative work plan demonstrating the technical approach used to achieve the goals of the management project.

The EPA evaluated Cadmus' proposal as being strong under this evaluation factor. However, since Cadmus' proposal indicated a majority of work under the contract would be performed by its subcontractors, the EPA noted that it would have been better for Cadmus to have provided work plans for its proposed subcontractors. EPA also noted that Cadmus did not include QA/QC as part of the review of tasks in the examples it submitted.

EPA found that Viar's proposal clearly outlined management projects demonstrating the necessary experience and provided several examples of projects covering a wide range of environmental statutes and regulations, as well as descriptions of potential problems and their solutions. EPA concluded that Viar's technical approach, as demonstrated by its sample work plan was "concise, clear, [and] thorough," and considered Viar's identification of specific problems and solutions to be an important strength in this area.

As part of its protest of the agency's technical evaluation of its proposal, Cadmus pointed out that some of the specific weaknesses identified by the EPA evaluators were not valid bases for downgrading its proposal. We agree that certain of EPA's explanations regarding the weaknesses in Cadmus' proposal fell short of providing substantive bases to downgrade the proposal. For example, EPA criticized the "tone" of Cadmus' proposal, stating "the tone of this proposal is condescending [sic]," and "full of self-importance." The EPA evaluators also criticized Cadmus' QA/QC process on the basis of a few typographical errors in the proposal and noted that the type style in one section of the proposal differed from the type style in the remainder of the proposal. We do not agree with the EPA evaluators that these matters constitute relative weaknesses in Cadmus' proposal. Nonetheless, our review of the proposals and EPA's evaluation leads us to conclude that these marginal criticisms did not have a major impact on the overall evaluation and that, on the whole, EPA's documentation adequately supports the scores awarded. We believe the documentation establishes that Viar's proposal was reasonably considered substantially superior to Cadmus' under each of the four technical evaluation factors.

The evaluation of technical proposals and the determination of their relative desirability is primarily a function of the

procuring agency, since it is the agency that is responsible for defining its needs and the best method of accommodating them, and must bear the burden of any difficulties resulting from a defective evaluation, Dimensions Travel Co., B-224214, Jan. 13, 1987, 87-1 CPD ¶ 52. Our Office will not substitute its judgment for the agency's as to the relative merits of proposals, but will examine the proposals and agency's evaluation to ensure that the evaluation was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. Travel Centre, B-236061.2, Jan. 4, 1990, 90-1 CPD ¶ 11. The fact that the protester disagrees with the agency's conclusion does not itself establish that the agency acted unreasonably. Id. Here, based on our review of the agency's evaluation of proposals, we are not persuaded that the agency's assessment of the relative technical merits of Cadmus' and Viar's proposals was unreasonable or, as outlined above, that the agency's evaluation was inconsistent with the RFP evaluation criteria.

In addition to challenging the scores given the two proposals, Cadmus protests that the process the EPA used to arrive at consensus technical scores was flawed. Cadmus notes that the TEP was comprised of four evaluators and that each of these evaluators initially rated Cadmus' proposal individually. After the individual evaluations were completed, the evaluators discussed the proposals and reached a consensus score for each evaluation criterion. Cadmus protests that the consensus scores were significantly different from some of the individual evaluators' scores and contrasts the two offerors' consensus scores with scores that would have been obtained by an arithmetic averaging of the individual scores.<sup>4/</sup> The EPA responds that the consensus scores awarded to the proposals in this procurement reflected the reasoned judgment of all of the evaluators as a result of their initial evaluations and the discussions which followed.

It is not unusual for individual evaluators to have disparate, subjective judgments on the relative strengths and weaknesses of a technical proposal. Mounts Eng'g, 65 Comp. Gen. 476 (1986), 86-1 CPD ¶ 358; Syscon Servs., Inc., B-235647, Sept. 21, 1989, 89-2 CPD ¶ 258. Consequently, disparities in evaluator ratings do not establish that the evaluation process was flawed or otherwise irrational. Unisys Corp., B-232634, Jan. 25, 1989, 89-1 CPD ¶ 75. Moreover, there is nothing improper in technical evaluators discussing the relative

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<sup>4/</sup> Cadmus acknowledges that applicable procurement regulations expressly prohibit the averaging of individual evaluators' scores to obtain consensus scores. 48 C.F.R. § 1515.605(b).



strengths and weaknesses of proposals in order to reach a consensus rating. Syscon Servs., Inc., supra.

Here, we find no basis for objecting to the process the EPA used to arrive at its consensus scores for the proposals. We believe that agency evaluators should discuss their individual evaluations with each other in order to reach a valid consensus since such discussions generally operate to correct mistakes or misperceptions that may have occurred in the initial evaluation. In short, the overriding concern in the evaluation process should be that the final scores assigned accurately reflect the actual merits of the proposals submitted--not that the final scores may be mechanically traced back through some arithmetic calculation to the scores initially given by the individual evaluators. We do not find that the EPA's process for determining consensus scores was flawed in this regard.

#### EXCLUSION OF TECHNICALLY ACCEPTABLE PROPOSAL

Cadmus also protests that, because it could have improved its technically acceptable proposal during discussions, its proposal should not have been excluded from the competitive range. Cadmus argues that, generally, only offers which are technically unacceptable and so deficient that major revisions are necessary to make them acceptable are properly excluded from the competitive range.


We agree that, generally, proposals that are to be considered within the competitive range are those which are technically acceptable or reasonably susceptible of being made acceptable through discussions--that is, proposals which have a reasonable chance of being selected for award. D-K Assocs., Inc., B-213417, Apr. 9, 1984, 84-1 CPD ¶ 396. However, a proposal which is technically acceptable may be excluded from the competitive range if, based upon the array of technical scores actually obtained by the offerors and consideration of the proposed costs, the proposal does not stand a real chance of being selected for award. ALM, Inc.; Technology, Inc., B-217284; B-217284.2, Apr. 16, 1985, 85-1 CPD ¶ 433; Marvin Eng'g Co., Inc., B-214889, July 3, 1984, 84-2 CPD ¶ 15. This "relative" approach to determining the competitive range is permissible even if it results in a competitive range of one, since continuing negotiations with an offeror when it has no reasonable chance for award is unfair to the offeror and undermines the integrity of the procurement process. See Institute for Int'l Research, B-232103.2, Mar. 15, 1989, 89-1 CPD ¶ 273; The Associated Corp., B-225562, Apr. 24, 1987, 87-1 CPD ¶ 436.

Here, Viar's proposal was rated substantially superior to Cadmus' under each of the four technical evaluation factors,



and Cadmus' proposed price was more than 12 percent higher than Viar's. As discussed above, the agency's documentation of its assessment of the relative technical merits of Cadmus' and Viar's proposals substantiates that, overall, the evaluations were reasonable. Because of the technical disparity between the two proposals, in conjunction with Cadmus' 12 percent higher cost, continued negotiations with Cadmus would have been unfair to Cadmus since it would have been required to incur needless expenditures of time and money pursuing the procurement. We conclude that the agency reasonably determined that Cadmus had no reasonable chance of receiving the contract and, accordingly, properly excluded Cadmus from the competitive range. See Institute for Int'l Research, supra; Pan Am World Servs., Inc., B-215308.5, Dec. 10, 1984, 84-2 CPD ¶ 641.

The protest is denied.

  
for James F. Hinchman  
General Counsel